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BLANK ROME LLP
THE WATERGATE BUILDING
600 NEW HAMPSHIRE AVENUE, NW
WASHINGTON DC 20037

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In re Application of :
Van Asselt :
Application No. 09/980,092 :
Filed: February 11, 2002 :
Attorney Docket No. VANASSELT.NEW1// :
115692-00101 :
For: BALL GAME APPARATUS

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition, filed March 25, 2005, under 37 CFR 1.137(b) to revive the above-identified application. Petitioner requests the rules be waived and the petition fee be refunded. This request requires a petition under 37 CFR 1.183. Petitioner argues non-receipt of an Office action. Thus, a discussion of a feeless petition under 37 CFR 1.181 to withdraw the holding of abandonment is merited.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The petition under 37 CFR 1.183 to waive the revival petition fee is **DISMISSED**.

The above-identified application became abandoned for failure to timely submit a reply within three (3) months of the mailing of the July 2, 2004 non-final Office action. No response being received and no extensions of time being obtained, this application became abandoned on October 3, 2004. The filing of the present petition precedes the mailing of A Notice of Abandonment.

Petitioner states the July 2, 2004 non-final Office action was not received until January 2, 2004 because the Office mailed it to an incorrect correspondence address. A review of the application file reveals that the Office action at issue was returned to the Office on July 21, 2004. Petitioner has provided evidence that a change in correspondence address was received by the Office on June 13, 2003. The address listed in the change in correspondence address document was practitioners' then-current address. However, the change in correspondence address was not entered in this application file. Therefore, the Office mailed the correspondence to practitioners' former correspondence address.

Petitioner is informed that each application file must be complete in and of itself. Rule 1.4(b). The June 13, 2003 change of correspondence address was not present in this application file until a copy was filed with the present petition. The transmittal letter to the June 13, 2003 change of correspondence address does not list the above-identified application. Two applications are identified by serial number and 1,300 other are referenced in the transmittal letter. The transmittal letter does not specifically identify the 1,300 applications to which the change of correspondence address applied. While the June 13, 2003 correspondence address document was received in the Office, it was not filed properly in the above-identified application. Thus, the Office mailed the July 2, 2004 Office action to the then-current correspondence address for the above-identified application.

The petition under 37 CFR 1.181 is dismissed.

Applicant has submitted an amendment in reply to the July 2, 2004 non-final Office action, an acceptable statement of the unintentional nature of the delay in responding to the July 2, 2004 non-final Office action, and the petition fee. Therefore, the petition under 37 CFR 1.137(b) is granted.

Petitioner requests that the petition fee be waived. However, this request requires a petition under 37 CFR 1.183. The cost of this petition is \$400.00. Petitioner has not specifically authorized payment of this petition fee. In addition, petitioner's attention is drawn to the fact that the petition to revive fee is statutory and cannot be waived. 35 U.S.C. 41(a)(7). The petition under 37 CFR 1.183 is dismissed.

After the mailing of this decision the application will be forwarded to Technology Center AU 3711 for consideration of the amendment filed on March 25, 2005.

Telephone inquiries should be directed to the undersigned at (571) 272-3230.



E. Shirene Willis
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy